

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

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In re:

*Carmela M. Coroni-Krogstad,*  
  
Debtor.

BKY 02-93232 GFK

Chapter 13 Case

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**NOTICE OF HEARING AND MOTION OBJECTING TO CONFIRMATION OF  
CHAPTER 13 PLAN**

TO: All parties in interest pursuant to Local Rule 9013-3:

1. Jasmine Z. Keller, Chapter 13 Trustee (the "Trustee"), by and through her undersigned attorney, moves the court for the relief requested below and gives notice of hearing.

2. **NOTE: CONTESTED MATTERS ONLY THAT WERE  
ORIGINALLY SCHEDULED TO BE HEARD BEFORE CHIEF JUDGE KISHEL  
ON SEPTEMBER 23, 2004 ARE CONTINUED FOR HEARING TO  
OCTOBER 28, 2004.** The court will hold a hearing on this motion at 10:30 a.m. on October 28, 2004, in Courtroom 228B, United States Courthouse, 316 North Robert Street, St. Paul, Minnesota

3. Any response to this motion must be filed and delivered not later than 10:30 a.m. on October 27, 2004 which is 24 hours (1 business day) before the time set for the hearing, or filed and served by mail not later than October 25, 2004, which is three business days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The Chapter 13 petition commencing this case was filed on October 22, 2002. The case is now pending in this court.

5. This motion arises under 11 U.S.C. § 1322 and 1325 and Bankruptcy Rule 3015. This motion is filed under Bankruptcy Rule 9014 and Local Rules 3015-3, 9006-1, 9013-1 through 9013-5, and such other Local Rules as may apply. Movant requests relief with respect to denial of confirmation of the Debtor's proposed Chapter 13 plan dated September 2, 2004 (the "Plan").

6. On October 22, 2002 the Debtor filed a Chapter 13 plan providing for a payment of \$275 per month for 48 months, for a total of \$13,200 to be paid to the Chapter 13 Trustee for distribution to creditors, which was confirmed on January 2, 2003. The plan projected a 7% repayment to creditors based upon estimated claims. On June 16, 2003, the Debtor filed a modified plan providing for a payment of \$275 for 41 months beginning one month after the filing of the plan, for a total of \$13,200 to be paid to the Chapter 13 Trustee for distribution to creditors, which was confirmed on July 31, 2003. The modified plan projected a 12% return to creditors based upon claims filed. On May 24, 2004, the Debtor filed a modified Chapter 13 plan providing for a payment of \$210 per month for 42 months, for a total of \$8,820 to be paid to the Chapter 13 Trustee for distribution to creditors, which was confirmed on July 29, 2004. The modified plan projected a 6% return to unsecured creditors. The Debtor now seeks confirmation of yet another modified plan to cure arrearages in her payments to the Chapter 13 Trustee by reducing the amount of her payments to the Chapter 13 Trustee to \$50 per month for an additional 16 months, reducing the plan term to 39 months. The Plan provides for payments of \$50 per month for 16 additional months, for a total of \$800 to be paid to the Chapter 13 Trustee for distribution to creditors. The plan projects no more than a 3% return to unsecured creditors, based upon unsecured claims filed prior to expiration of the claims bar date.

7. According to the Trustee's records, the Debtor has made only 16 payments of \$275 during the pendency of her Chapter 13 case, as shown by a copy of the Trustee's payment record incorporated herein and attached hereto as Exhibit A. She now seeks to modify her plan yet again, making less than 36 payments to the Trustee, producing a much smaller percentage return to unsecured creditors, and thereafter receive a discharge of her remaining debts under 11 U.S.C. § 1328(a).

8. As such, the Debtor seeks to obtain a discharge of her remaining unsecured debts after making no more than 32 payments to the Chapter 13 Trustee, for a total distribution to creditors of 3%.

9. It is the Trustee's position that the current modified plan unfairly manipulates the provisions of the Bankruptcy Code to the detriment of unsecured creditors. The Debtor has benefited from the protection afforded by the automatic stay in Chapter 13 for 23 months as of the date of this Motion, while making only 16 payments to the Chapter 13 Trustee. It is the Trustee's position that the three-year period contemplated by the Statute means that a debtor must make at least 36 payments, not simply remain in Chapter 13 for 36 months, without regard for missed payments during the pendency of a 36-month plan.

10. Feasibility of the Plan is also an issue. Based upon the facts alleged in the Debtor's Motion seeking confirmation of the Plan, she cannot now work full time, and that her income is substantially reduced. Any further adverse change in her financial circumstances suggests that it is unlikely she will be able to make the payments required by the Plan. It is the Trustee's position that the Plan violates 11 U.S.C. § 1325(a)(6).

11. Under such circumstances, it seems reasonable to suppose that the appropriate remedy for the situation in which the Debtor finds herself is an application for hardship discharge pursuant to 11 U.S.C. § 1328(b).

12. If necessary, the Debtor and/or representatives of the Chapter 13 Trustee may be called to testify as to the matters alleged in this motion.

WHEREFORE, the Trustee requests that confirmation of the Debtor's proposed Chapter 13 plan be denied, and such other relief as may be just and equitable.

Jasmine Z. Keller, Trustee

Dated: September 8, 2004

/e/ Margaret H. Culp  
Thomas E. Johnson, ID # 52000  
Margaret H. Culp, ID # 180609  
Counsel for Chapter 13 Trustee  
12 South 6th Street, Suite 310  
Minneapolis, MN 55402-1521  
(612) 338-7591

#### **VERIFICATION**

I, Margaret H. Culp, employed by Jasmine Z. Keller, Chapter 13 Trustee, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed: September 8, 2004

/e/ Margaret H. Culp

Receipts

mhc

## Case Summary

Legal	\$1,700.00	Total Continuing	\$0.00	Total Due to Date	\$5,240.00	Principal Paid	\$4,400.00
Priority	\$0.00	Proj Trustee Fee	\$762.74	Receipts to Date	\$4,400.00	Interest Paid	\$0.00
Secured	\$9,386.66	Total Debt	\$34,105.24	Less Debtor Pfds	\$0.00	Funds Held	\$0.00
Unsecured	\$22,255.84	Balance to Pay	\$29,705.24	Delinquent Amt	\$840.00	Funds Available	\$0.00
Unsec Special	\$0.00	Total Base Amt	\$13,220.00	Start Payment	11/21/2002	Bal On Hand	\$0.00
Accrued Interest	\$0.00	Base Amt Balance	\$8,820.00	Current Pmt	\$210.00	Show Payoff	
Admin & Other	\$0.00						

Warning-Less than 36 mos. 100% req.

## Receipts History

Money Order	3/19/2004	545862864	\$275.00		04030130
Money Order	2/26/2004	203926092	\$275.00		04020169
Money Order	2/10/2004	203926242	\$275.00		04020063
Personal Che...	1/8/2004	3594	\$275.00		04010042
Money Order	12/2/2003	203926216	\$275.00		03120027
Money Order	10/23/2003	545867495	\$275.00		03100141
Money Order	9/23/2003	43233469...	\$275.00		03090143
Personal Che...	8/19/2003	1150	\$275.00		03080116
Personal Che...	6/20/2003	1144	\$275.00		03060132
Personal Che...	5/19/2003	1127	\$275.00		03050117
Personal Che...	4/17/2003	1093	\$275.00		03040113
Personal Che...	3/12/2003	1066	\$275.00		03030080
Personal Che...	2/18/2003	1052	\$275.00		03020108
Personal Che...	1/16/2003	1039	\$275.00		03010106
Personal Che...	12/17/2002	1023	\$275.00		02120129
Personal Che...	11/20/2002	1012	\$275.00	Rcpt # 52332	02110135

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EXHIBIT A

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

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In re:

BKY 02-93232 GFK

*Carmela M. Coroni-Krogstad,*

Chapter 13 Case

Debtor.  
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**MEMORANDUM IN SUPPORT OF OBJECTION TO CONFIRMATION**

FACTS

The facts supporting the Trustee's objection are summarized in the accompanying motion and will not be repeated here. The Trustee also relies on the representations made by the Debtor in her verified Schedules and Statements on file and of record herein.

LEGAL DISCUSSION

- I. Even if the "best efforts" test does not apply to post-confirmation plans, a debtor must provide for a minimum of 36 payments to creditors.

Bankruptcy Code section 1325(a)(1) requires that a plan must comply with the provisions of Chapter 13 and other applicable provisions of Title 11. As indicated in the Statute, the 36-month plan period begins on the date that the first payment is due under the plan. *11 U.S.C. § 1325(b)(1)(B)*. The Debtor's first confirmed plan required that the first plan payment be made in November 2002. From November 2002 to September 2004, the Debtor made a total of 16 payments of \$275 each. Therefore, the Debtor has made no more than 16 payments to the Chapter 13 Trustee during the 23-month period she has enjoyed the protection of the automatic stay. There is no support in the record as provided by the Debtor to justify fewer than 36 payments to the Trustee. Maintaining the integrity of confirmed plans is an important part of the Chapter 13 process. *In re Guernsey*, 189 B.R. 477, 482 (Bankr. D. Minn. 1995). Unless the Debtor can provide compelling support for such a modification providing for less than 36 payments, and an effective "meltdown" of the return to unsecured creditors from the original 7% to 3%, confirmation should be denied.

As of the date of this Motion, the Debtor has remained under the protection of the Bankruptcy Court for 23 months, but now seeks release from her concomitant responsibility of making at least 36 payments to the Trustee. In essence, the Debtor seeks to escape the consequences of her payment defaults by filing a modified plan that not only limits her payment obligation to 32 payments, but also frustrates the reasonable expectations of creditors who have been led to anticipate a stream of payments for at least

36 months over the last 23 months. It is the Trustee's position that the Debtor's modified plan must continue until the Debtor has made at least 36 payments in order to demonstrate good faith. Anything less constitutes an unfair manipulation of the Bankruptcy Code. *In re Debing*, 202 B.R. 291 (Bankr. D. Minn. 1996); *In re Nelson*, 189 B.R. 748 (Bankr. D. Minn. 1995); *In re Guernsey*, 189 B.R. 477 (Bankr. D. Minn. 1995); *In re Nelson*, 189 B.R. 748 (Bankr. D. Minn. 1995). And see *In re Walters*, 223 B.R. 710, 712 (Bankr. W.D. Missouri 1998); *In re Vasquez*, 261 B.R. 654 (Bankr. N.D. Tex. 2001).

- II. In order to confirm a Plan, under 11 U.S.C. § 1325(a)(6), the Court must find that the Debtor will be able to make all payments under the Plan and comply with the Plan.

Based upon the Debtor's moving papers, it appears that her financial circumstances steadily worsened since the filing. It is unreasonable to suppose that she will be able to make the payments called for by the Plan when her primary source of income has been reduced and her ability to work full time has been curtailed. Her budget at filing appeared to be strained to enable her to make plan payments. Under her present circumstances, it appears far less likely, if not impossible, that she will be able to continue to make even reduced payments. The appropriate remedy for debtors who find themselves unable to make payments due to circumstances beyond their control is to seek a hardship discharge as provided by 11 U.S.C. § 1329(b).

### CONCLUSION

For the reasons stated herein, confirmation of the Debtor's proposed Chapter 13 plan should be denied.

Respectfully submitted:

Dated: September 8, 2004

/e/ Margaret H. Culp  
Thomas E. Johnson, ID # 52000  
Margaret H. Culp, ID # 180609  
Counsel for Chapter 13 Trustee  
12 S. 6th Street, Suite 310  
Minneapolis, MN 55402-1521  
(612) 338-7591

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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

I, Margaret H. Culp, employed by Jasmine Z. Keller, Chapter 13 Trustee, declare that on September 8, 2004, I served Notice of Hearing and Motion Objecting to Confirmation of Plan, Memorandum of Facts and Law and proposed Order on the individual(s) listed below, in the manner described:

**By facsimile transmission:**

United States Trustee

612-664-5516

James T. Skonnard, Esq.

651-224-6087

**By first class U.S. mail:**

Carmela M. Coroni-Krogstad

715 Williams Street North

Stillwater, MN 55082

James T. Skonnard, Esq.

311 Ramsey Street

St. Paul, MN 55102

And I declare, under penalty of perjury, that the foregoing is true and correct.

Executed: September 8, 2004

/e/ Margaret H. Culp

UNITED STATES BANKRUPTCY COURT  
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In re:

*Carmela M. Coroni-Krogstad,*  
  
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Chapter 13 Case

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**ORDER DENYING CONFIRMATION OF CHAPTER 13 PLAN**

At St. Paul, MN, \_\_\_\_\_, 2004.

The above-entitled matter came on for hearing before the undersigned United States Bankruptcy Judge on the Chapter 13 Trustee's objection to confirmation of the Debtor's proposed Chapter 13 plan.

Appearances were noted in the minutes.

Upon the foregoing objection, arguments of counsel, and all of the files, records and proceedings herein:

IT IS ORDERED:

Confirmation of the Debtor's proposed Chapter 13 plan dated September 2, 2004 is **DENIED**.

\_\_\_\_\_  
Gregory F. Kishel  
Chief United States Bankruptcy Judge